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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 175

MARY E. CHEWNING, *Petitioner*,

v.

THE DISTRICT OF COLUMBIA, a Municipal Corporation, Garnishee, *Respondent*.

PETITION OF MARY E. CHEWNING FOR A REHEARING.

CORNELIUS H. DOHERTY,
Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PETITION FOR REHEARING.

Comes now the above named petitioner, Mary E. Chewning, and presents this, her petition for a rehearing of the above entitled cause, and, in support thereof, respectfully shows:

Your petitioner respectfully states that the decision of the United States Court of Appeals in this cause is not consistent with the fundamental principles set forth in certain decisions of this Court, and that the action of the Court in refusing to grant a writ of certiorari is not consistent with its decisions or with its actions in other cases.

The only question presented to the District Court, to the United States Court of Appeals and to this Court is set forth in the opinion of the United States Court of Appeals (R. 8 and 9):

> "The question is whether, as the District Court held, the District of Columbia is exempt from garnishment proceedings for the collection of a private judgment. This is a question of statutory construction. The garnishment statute does not mention the District, but refers generally to 'any garnishee'."

In the case of *Metropolitan Railroad Company* v. *District of Columbia*, 132 U. S. 1, the Court, in its opinion, at Page 3, stated:

> "It is contended by the plaintiff that it (the District of Columbia) is not amenable to the statute of limitations, for three reasons: first, because of its dignity as partaking of the sovereign power of government; secondly, because it is not embraced in the terms of the statute of limitations in force in the District; and, thirdly, because if the general words of the statute are sufficiently broad to include the District, still, municipal corporations, unless specially mentioned, are not subject to the statute.
>
> 1. The first question, therefore, will be, whether the District of Columbia is, or is not, a municipal body merely, or whether it has such a sovereign character, or is so identified with or representative of the sovereignty of the United States as to be entitled to the prerogatives and exemptions of sovereignty."

and again at Page 7:

> "In view of these laws, the counsel of the plaintiff contend that the government of the District of Columbia is a department of the United States Government, and that the corporation is a mere name, and not a person in the sense of the law, distinct from the government itself. We cannot assent to this view. It is contrary to the express language of the statutes. That language is that the District shall 'remain and continue a municipal corporation,' with all rights of ac-

> tion and suits for and against it. If it were a department of the Government, how could it be sued? Can the Treasury Department be sued? or any other department? We are of opinion that the corporate capacity and corporate liabilities of the District of Columbia remain as before, and that its character as a mere municipal corporation has not been changed."

and again at Page 9:

> "We are clearly of opinion that the plaintiff is a municipal corporation, having a right to sue and be sued, and subject to the ordinary rules that govern the law of procedure between private persons."

and again at Page 10:

> "Corporations are 'persons' in the law. There is no apparent reason why they should not be included in the statute. It is conceded that private corporations are included. On what ground, then, can municipal corporations be excluded? Not on the ground that they are not 'persons,' for that would exclude private corporations. They are, therefore, within the terms of the law.
>
> 3. Are they not also within the spirit and reason of the law? They are certainly within the reason of the preamble. It is just as much for the public interest and tranquility that municipal corporations should be limited in the time of bringing suits as that individuals or private corporations should be."

This case clearly indicates that the District of Columbia is not entitled to any consideration other than that to which any private suitor would be entitled.

The fundamental principles of law involved in the *Metropolitan Railroad* case are followed in the case of *Croson* v. *The District of Columbia*, 55 Appeals D. C. 22.

As to the question of statutory construction of the words "sue and be sued", the Court of Appeals indicated, in its opinion, that because the Supreme Court of the District of Columbia, in 1873, held that the District of Columbia was not subject to garnishment, and that that view was held in

the Court of Appeals in 1893, that by Congress permitting those decisions to stand without Congressional action was, in effect, a ratification of those decisions. In answer to this, it is respectfully submitted that it cannot be so considered unless the matter was presented directly to Congress, and it is fair to assume that very few, if any, of the legislators, during that period of time, had any knowledge of these decisions.

If we were to follow this reasoning we would have the decision of the United States Court of Appeals in the case of *McCarthy* v. *United States Shipping Board Merchant Fleet Corporation*, 60 Appeals D. C., 311, 53 Fed. (2nd) 923, decided November 2, 1931, and it can be said that the United States Shipping Board Merchant Fleet Corporation, was a corporation similar to the Federal Housing Corporation and Home Owners' Loan Corporation, and others, and in that case it was contended that the Fleet Corporation had been liable to be sued in certain cases upon its contracts and torts like a private corporation, and accordingly could not claim to be exempt from garnishment as a public agency, and the United States Court of Appeals said, at Page 311:

> "This conclusion, however, is not warranted, for such an agency may be permitted by law to sue or be sued upon its obligations without being subjected to attachment or garnishment in cases unrelated to its own duties or liabilities."

and thereafter Congress creating the Federal Housing Corporation by the Act of June 27, 1934, C. 847, 48 Stat. 1246, as amended by Act of Aug. 23, 1935, C. 614, 49 Stat. 684, 722, and placing therein the same words, that it may "sue and be sued" and this Court, in the case of *Federal Housing Administration* v. *Burr*, 309 U. S. 242, 60 Supreme Court Rep. 488, giving to these words an entirely different construction, saying, at Page 245:

> "Clearly the words 'sue and be sued' in their normal connotation embrace all civil process incident to the commencement or continuance of legal proceed-

> ings. Garnishment and attachment commonly are part and parcel of the process, provided by statute, for the collection of debts. * * * But however it may be denominated, whether legal or equitable, and whenever it may be available, whether prior to or after final judgment, garnishment is a well-known remedy available to suitors. To say that Congress did not intend to include such civil process in the words 'sue and be sued' would in general deprive suits of some of their efficacy. Hence, in absence of special circumstances, we assume that when Congress authorized federal instrumentalities of the type here involved to 'sue and be sued' it used these words in their usual and ordinary sense."

The decision of this Court is directly contrary to the decision of the United States Court of Appeals in *McCarthy* v. *United States Shipping Board Merchant Fleet Corporation*, and if we must assume that Congress ratified the early decisions of the Supreme Court of the District and the United States Court of Appeals, relative to garnishment against the District of Columbia, we must go further and assume that Congress ratified the decision of the United States Court of Appeals, which was decided in 1931, and that there could be no garnishment of corporations similar to the United States Shipping Board Merchant Fleet Corporation, but that is not so, and this Court has definitely held that they can be garnisheed.

It is inconsistent to hold that there is insufficient evidence of sovereignty in the District of Columbia to permit its pleading the Statute of Limitations, but that there is sufficient evidence of such sovereignty in the District of Columbia to prevent its being garnisheed in a private proceeding.

The judgment debtor in this case could sue the District of Columbia for her wages or she might assign her wages to your petitioner and your petitioner, without doubt, could sue the District of Columbia on this assignment, for there are a number of cases in which such suits were brought;

District of Columbia v. *Selden,* 63 Apps. D. C. 40, 68 Fed. 988, and *District of Columbia* v. *Smith,* 63 Apps. D. C. 363, 72 Fed. (2nd) 735.

We have the strange situation of a judgment debtor in an ordinary private corporation or a governmental corporation of the type of the Federal Housing Administration being under the compulsion of paying their just obligations by garnishment proceedings issued against their employers, and another judgment debtor employed by the District of Columbia being free from any such compulsion.

In the opinion of the United States Court of Appeals (R. 9) the Court says:

> "The District has 12,000 employees, and from time to time owes money to many other persons. It states that if it is subject to garnishment, it must expand its disbursing office and its corporation counsel's office."

This situation is the same for any private corporation and also with the corporations of the type of the Federal Housing Administration, and the only thing that they are called on to do is to answer the question:

> "Were you at the time of the service of the annexed writ of attachment, or have you been between the time of such service and the filing of your answer to this interrogatory indebted to the defendant, and, if so, how, and in what amount?"

and then hold the judgment debtor's salary until an order has been passed in Court, and this order protects the garnishee from any further liability. This same contention was urged in the *Burr* case and was answered by this Court, at Page 249, as follows:

> "In our view, however, the bridge was crossed when Congress abrogated the immunity by this 'sue and be sued' clause. And no such grave interference with the federal function has been shown to lead us to imply that Congress did not intend the full consequences of

what it said. Hence, considerations of convenience, cost and efficiency which have been urged here are for Congress which, as we have said, has full authority to make such restrictions on the 'sue and be sued' clause as seem to it appropriate or necessary."

For the foregoing reasons, and for the further reasons set forth in the Petition for a Writ of Certiorari, it is respectfully urged that the petition for a rehearing be granted and that the judgment of the Court denying the petition for a writ of certiorari be reconsidered, and that a writ of certiorari be granted, for the reason that the fundamental principles of the law involved herein are of sufficient conconsequence to require this Court to allow a writ merely for the purpose of clarification of these decisions, even though the decision of the United States Court of Appeals in this case should be upheld, for it is your petitioner's belief that the decisions of the United States Court of Appeals are in direct conflict with the decisions of this Court and its views as to the statutory construction of the words "sue and be sued".

Respectfully Submitted:

CORNELIUS H. DOHERTY,
Counsel for Petitioner.

I, Cornelius H. Doherty, counsel for the above named Mary E. Chewning, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

CORNELIUS H. DOHERTY,
Counsel for Petitioner.